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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GOPIKRISHNA T. KUMAR, KANNAN AVUDAI,
and MILIND PALTANWALE

Appeal 2009-006472
Application 09/852,360¹
Technology Center 2400

Before MARC S. HOFF, CARLA M. KRIVAK, and
CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The real party in interest is Hewlett-Packard Development Company, L.P.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a Final Rejection of claims 1-13. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' invention concerns a method and apparatus for managing shopping sessions between wireless communications devices and an application program. Wireless session identifiers are provided from a gateway module to the application program, which in turn provides application session identifiers back to the gateway module. The respective identifiers are associated at the gateway module. In response to subsequent communications from the wireless communications devices to the application program, the gateway module transmits the application session identifiers to the application program (Spec. 3).

Claim 1 is exemplary of the claims on appeal:

1. A computer-implemented method for managing respective sessions between mobile communication devices and an application program hosted on a data processing system with a gateway module that is coupled to the mobile communications devices and to the application program, comprising:

generating at the gateway module respective first session identifiers upon receipt of initial requests from the mobile communication devices at the gateway module and transmitting the first session identifiers to the application program;

associating the first session identifiers with corresponding second session identifiers from the application program at the gateway module, wherein respective connections are established between the mobile communications devices and the application program and

in response to subsequent communications from the mobile devices to the application program while the respective connections between the mobile devices to the application program are established and for communications within the respective sessions, transmitting from the gateway module to the application program the second session identifiers

that are associated with the first session identifiers of the mobile devices of the subsequent communications.

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Nguyen	US 5,931,917	Aug. 3, 1999
Sparks	US 6,167,382	Dec. 26, 2000
Davis	US 6,367,009 B1	Apr. 2, 2002
Aziz	US 6,643,701 B1	Nov. 4, 2003

Alan O. Freier, Philip Karlton, & Paul C. Kocher, *The SSL Protocol Version 3.0* (March 1996) (hereinafter Kocher).

Claims 1-4 and 11-13 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Aziz.

Claims 5 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Aziz in view of Davis.

Claims 6-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Aziz in view of Davis and Sparks.

Claims 1-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nguyen in view of Davis.

Throughout this decision, we make reference to the Appeal Brief (“App. Br.,” filed Feb. 28, 2008), the Reply Brief (“Reply Br.,” filed Jul. 29, 2008), and the Examiner’s Answer (“Ans.,” mailed May 30, 2008) for their respective details.

ISSUES

With respect to the rejection over Aziz, Appellants argue, inter alia, that Aziz does not teach that the second session identifier, which the merchant application provided to the gateway, is transmitted back to the application from the gateway for subsequent communications (App. Br. 15).

With respect to the rejection over Nguyen in view of Davis, Appellants argue that Nguyen's terminal identifier (TID) does not meet the claimed second session identifier because it is generated by the point of sale (POS) and not by the bank (which the Examiner analogizes to the claimed merchant application) (App. Br. 20). Appellants further argue that Nguyen fails to teach the claimed connection between mobile communications devices and the application program (App. Br. 21).

Appellants' contentions present us with the following issues:

1. Does Aziz teach that the second session identifier is transmitted from the gateway module to the application program in response to subsequent communications from the mobile devices to the application program while respective connections between the mobile devices to the application program are established?

2. Does Nguyen teach associating first session identifiers with corresponding second session identifiers from the application program at the gateway module?

3. Does Nguyen teach respective connections established between the mobile communications devices and the application program?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Kocher

1. Kocher teaches the sending of "hello" messages between client and server "[w]hen the client and server decide to resume a previous session or duplicate an existing session" and if "the server is willing to re-establish the

connection under the specified session state” (Kocher 18). “Once the re-establishment is complete, the client and server may begin to exchange application layer data” (*id.*).

Nguyen

2. Nguyen teaches that VPOS 2007 processes a plurality of customers concurrently. For each such customer 2000, VPOS 2007 builds a data structure 2010, representing the transaction to be performed for that customer. For each data structure 2010, VPOS 2007 initiates communication with acquiring bank 2004 using communication link 2003 (col. 65, ll. 39-48).

PRINCIPLES OF LAW

““A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference.”” *See In re Buszard*, 504 F.3d 1364, 1366 (Fed. Cir. 2007) (quoting *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994)).

“Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (citing *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

Absent a showing of good cause, the Board is not required to address an argument in the Reply Brief that could have been presented in the principal Brief. *See Ex parte Borden*, 93 USPQ2d 1473, 1473-74 (BPAI 2010) (“informative”²).

ANALYSIS

§ 102 REJECTION OF CLAIMS 1-4 AND 11-13

Independent claims 1, 4, and 11 each recite transmitting second session identifiers from the gateway module to the application program, in response to subsequent communications from the mobile devices to the application program, *while the respective connections between the mobile devices to the application program are established*.

Appellants' argument that Aziz does not teach transmitting the second session identifier in this fashion (App. Br. 15) is persuasive. Kocher, relied upon by the Examiner to explain details of the known SSL protocol (Ans. 5), teaches the sending of "hello" messages between client and server "[w]hen the client and server decide to resume a previous session or duplicate an existing session" and if "the server is willing to re-establish the connection under the specified session state" (FF 1). "Once the re-establishment is complete, the client and server may begin to exchange application layer data" (FF 1). The section of Kocher relied upon by the Examiner therefore does not support transmitting the second session identifier from gateway to application program *while the connection is established*, because the cited section only refers to events occurring *before* re-establishment of the connection. Consequently, we find that Aziz and Kocher do not teach all the limitations of the invention recited in independent claims 1, 4, and 11. We therefore find that the Examiner erred in rejecting claims 1, 4, and 11, as well as dependent claims 2, 3, 12, and 13, as being anticipated under § 102 over Aziz, and we will not sustain the Examiner's rejection.

§ 103 REJECTIONS OF CLAIMS 5-10 CITING AZIZ

Claims 5-10 are rejected as being obvious over Aziz in view of Davis (claims 5 and 10) or over Aziz in view of Davis and Sparks (claims 6-9). Similar to independent claim 1, independent claims 5 and 10 also recite transmitting second session identifiers from the gateway module to the application program, in response to subsequent communications from the mobile devices to the application program, while the respective connections between the mobile devices to the application program are established.

We have reviewed Davis and Sparks and find that neither reference remedies the deficiencies of Aziz (with Kocher as evidence) noted *supra*. The Examiner thus erred in asserting the prima facie obviousness of these claims. Accordingly, we will not sustain the § 103 rejections of claims 5-10, for the reasons expressed *supra* with respect to the § 102 rejection of claims 1-4 and 11-13.

§ 103 REJECTION OVER NGUYEN IN VIEW OF DAVIS

We select claim 1 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Appellants' argument that TID field 2005 in Nguyen (which the Examiner equates to the claimed second session identifier) is generated by the POS and not the bank (which the Examiner equates to the claimed application) (App. Br. 20) is not persuasive to show Examiner error, because the argument does not correspond to the claimed subject matter. Representative claim 1 recites "associating the first session identifiers with corresponding second session identifiers *from* the application program at the gateway module" (emphasis added). Nothing in the claim requires that the application program *generate* the second session identifier.

Appellants' argument that Nguyen does not teach that a connection is established between the mobile communications devices and the application program, but rather separately teaches communication between clients 2000 and the VPOS terminal, and between the VPOS terminal and bank 2004 (App. Br. 21), is similarly unpersuasive. The language of the claim does not require a *direct* connection between the mobile communications devices and the application program. The presence of the VPOS does not negate Nguyen's teaching of a connection beginning with clients 2000 and concluding with bank 2004 (FF 2; Nguyen Fig. 20C). Further, we agree with the Examiner's finding that Nguyen teaches a customer issuing payment or account requests so that the bank will pay the merchant on behalf of the customer, and that these customer requests are delivered to the bank (*see* Abstract; FF 2), which amounts to a teaching that the customer is in communication with the application program (i.e., bank) (Ans. 19).³

We therefore agree with the Examiner that the combination of Nguyen and Davis teaches or suggests all the limitations of claims 1-13. Accordingly, we will sustain the Examiner's § 103 rejection.

CONCLUSIONS

1. Aziz does not teach that the second session identifier is transmitted from the gateway module to the application program in response to subsequent communications from the mobile devices to the application

³ Appellants' new arguments on page 6 of the Reply Brief – that TID 2005 does not identify any type of session, that Nguyen does not disclose that bank 2004 sends physical TID 2005 or the virtual terminal ID to the VPOS, and that Nguyen does not teach associating first session identifiers with corresponding second session identifiers – are not entitled to consideration absent a showing of good cause, as they were not presented in the principal Brief. *See Borden*, 93 USPQ2d at 1473-74.

program while respective connections between the mobile devices to the application program are established.

2. Nguyen teaches associating first session identifiers with corresponding second session identifiers from the application program at the gateway module.

3. Nguyen teaches respective connections established between the mobile communications devices and the application program.

ORDER

The Examiner's rejection of claims 1-13 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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